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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,374	10/10/2002	Achim Seibertz	201-0493	1010

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FORD GLOBAL TECHNOLOGIES, LLC.  
SUITE 600 - PARKLANE TOWERS EAST  
ONE PARKLANE BLVD.  
DEARBORN, MI 48126

EXAMINER

PAREKH, ANKUR

ART UNIT	PAPER NUMBER
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3681

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/065,374

Applicant(s)

SEIBERTZ ET AL.

Examiner

Ankur Parekh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 1,6,7,9,12,17-20,26 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 2-5,8,10,11,21,22 and 27-31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

1. This is the first Office action on the merits of Application No. 10/065,374, filed Oct 10, 2002. Claims 1-34 are pending.

#### ***Claim Objections***

2. The claims are objected to because there are two claims that are identified as "Claim 32." The second of these claims has been renumbered to "Claim 33" and the existing claim 33 has been renumbered to "Claim 34." It appears that, even though the claims have been misnumbered, applicant has properly paid for 14 claims in excess of 20.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7 and 9 recite the limitation "said waiting time" in line 1. There is insufficient antecedent basis for this limitation these claims. In order to further treat claims 7 and 9 on their merits, claim 7 is interpreted as depending from claim 6 instead of claim 1 and claim 9 is interpreted as depending from claim 8.

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*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 6, 12, 26, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. ('086). Yamamoto et al. discloses a method for controlling an on/off state of an internal combustion engine disposed in a motor vehicle, the running internal combustion engine capable of being automatically switched off, the method comprising the step of suppressing the capability of automatically switching off in response to detection of a stop-and-go situation (traffic congestion). See col. 2, ll. 24-37.

Further regarding claim 6, the method further comprises the step of discontinuing the suppression of the switching off when a predetermined waiting time has elapsed. See col. 8, ll. 34-36.

Further regarding claim 12, a global positioning system (52) is coupled to the vehicle. The method disclosed in Yamamoto et al. further includes the steps of: determining a location of the vehicle via the global positioning system (see col. 7, ll. 50-55); and detecting the stop-and-go situation based on the location wherein the location is compared to a digital map in which

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expressway section in which stop-and-go situations are normally encountered are indicated (see col. 5, ll. 47-54, which discusses the concept of “map matching”).

Regarding claims 26 and 32-34, the method is Yamamoto is performed by an ECU that executes instructions stored in a computer readable storage media. The method steps of the method are encoded in the instructions.

7. Claims 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Aoki et al. ('012). See Fig. 3. Because the method depicted in this figure does not include a step of determining the range the transmission is in, the method will switch off the engine automatically when either the neutral or drive position of the automatic transmission is selected as long as the other conditions shown in Fig. 3—including a velocity of substantially zero and an activated brake—are met.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. ('086). Yamamoto et al. discloses all of the limitations of claim 7 except for the limitation requiring the waiting time to be “approximately 5 seconds”. Yamamoto et al. discloses that the stopping of the operation of the engine is prohibited for only a “predetermined

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length of time.” Col. 8, ll. 34-36. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set the “predetermined length of time” in Yamamoto et al. to “approximately 5 seconds” because it has been held that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

### ***Allowable Subject Matter***

10. Claims 2-5, 8, 10, 11, 21, 22, and 27-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 13-16 and 23-25 are allowed.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the engine stopping control disclosed in Kuroda et al. ('842), Aoki et al. ('012), Kuroda et al. ('889), and Gotoh et al. ('820), and Kuroda et al. ('926). Note the method and apparatus for determining a road traffic condition disclosed in Momose et al. ('072).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ankur Parekh whose telephone number is (703) 305-3795. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (703) 308-0830. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

  
Ankur Parekh  
December 8, 2003